

SCHEDULE 9

This Schedule 9 provides the general terms and conditions to apply with respect to Managed or Assigned Contracts, unless the Parties shall otherwise agree in any relevant Service Schedule. The Parties agree that the specific terms and conditions of this Schedule 9 as applied to a Service Schedule in which Vendor is assuming responsibility for Managed and Assigned Contracts may be negotiated and adjusted as applicable to the specific Managed and Assigned Contracts at the time such Service Schedule is executed. For the avoidance of doubt, until such time as the Parties agree in writing that Vendor will assume responsibility for specific Managed or Assigned Contracts (or an identifiable class of such Contracts), this Schedule 9 shall not apply to any Service Schedule. Schedule 9 is specifically not applicable to SFR Recycling Services, Exhibit A, unless the Parties shall, subsequent to the execution of the Agreement (defined below), expressly agree in writing to the contrary, including the express identification of any such Managed and Assigned Contracts.

This Schedule 9, if applicable under a Service Schedule, shall become a part of the **Master Recycling, Processing and Marketing Services Agreement** (the “**Agreement**”) executed as of _____, 2010 by and between [Vendor Name], a _____ company, (“**Vendor**”), and the City of Austin (the “**City**”). Each non-grammatical capitalized term used herein that is not otherwise defined in this Schedule 9 shall have the meaning given to such term in the Agreement.

1. MANAGED AND ASSIGNED CONTRACTS. If there are any agreements between the City and any third-party suppliers and vendors identified in a Service Schedule that relate to the Services to be provided by Vendor thereunder, other agreements to which the City is a party under which the City receives or provides recycling services, and such other agreements as mutually agreed to by the Parties during each Transition Period (collectively, the “**Managed Contracts**”), then such Managed Contracts shall be managed by Vendor to the extent provided in the Agreement and the applicable Service Schedules. As soon as reasonably practicable following the Acceptance Date, all Managed Contracts under which the City receives or provides in-scope recycling services which are to be the subject of the Services under an applicable Services Schedule (collectively, the “**Assigned Contracts**”) shall be assigned to Vendor, and Vendor shall interface with, manage, and become the counterparty of record in lieu of the City, (i.e., Vendor, and not the City, shall be the counterparty of record) with respect to, all Assigned Contracts that are effectively assigned to Vendor. Upon the assignment of any Assigned Contract, Vendor agrees to:

1.1 Credit to the City accounts any revenue earned, service credits or other credits actually received by Vendor from any third-party in connection with such agreement that arise from services provided by or to any such third-party to or from the City.

1.2 Promptly notify the service provider counterparty, or other necessary third-parties, of any service failure or defect upon notification by the City or Vendor’s own discovery of such failure or defect.

1.3 Promptly remit to the service provider counterparty or other third-parties all amounts owed by Vendor under such agreement on account of services provided to the City upon receipt of the corresponding Charges from the City.

1.4 Immediately notify the City if Vendor receives a notice of service failure, default, suspension, disconnection, or termination under any such agreement.

1.5 Promptly cure any event of default the occurrence of which was within Vendor's reasonable control that gives rise to a notice of default, termination, suspension or disconnection under (iv) above unless such event of default relates to an act or omission of the City, in which event Vendor shall only give prompt written notice of same to the City.

1.6 Manage third-party vendors under such agreement to the extent necessary to verify that they are operating under the terms of such agreement.

1.7 Manage the relationship with and the provision of services to Customers of the City under such agreement relating to the provision of recycling services to such Customers.

1.8 Interface and coordinate with third-party vendors or subcontractors for the purpose of performing services that are necessary to the City, but that are otherwise not included within the Services.

2. REQUIRED CONSENTS. To the extent that under a Services Schedule, the Vendor is to assume the duties and obligations set out in Section 1 of this Schedule 9 with respect to the Managed Contracts or Assigned Contracts, the City shall use all commercially reasonable efforts to obtain, at its cost and expense, prior to the: (i) applicable Trial Commencement Date, with respect to Managed Contracts, or (ii) Acceptance Date, with respect to the Assigned Contracts, all consents, waivers, and approvals that are set forth in the applicable Service Schedule, including those necessary to assign the Assigned Contracts or to permit Vendor's management of the Managed Contracts (the "**Required Consents**"). Vendor, at its option, may elect not to accept a Managed Contract if required Consents cannot be obtained after reasonable diligence.

3. WORKAROUND. The parties do not intend any provision of the Agreement to require assignment or transfer of any Assigned Contract or other agreement, the assignment or transfer of which is prohibited by Applicable Law or contract. If any such prohibition prevents assignment or transfer of an Assigned Contract or obtaining any Required Consent, the parties shall cooperate reasonably in making alternative arrangements under which the parties achieve comparable risks and results, without causing a breach or violation of any Applicable Law or contract.

4. THIRD PARTY SERVICE PROVIDERS. The City shall use reasonable efforts to cause its relevant departments and third party providers to cooperate and share information with Vendor with regard to Vendor's performance of the Services. Vendor shall use reasonable efforts to cooperate and share information with the City's departments and third party providers in connection with such providers' performance of their obligations to the City. Sharing information pursuant to this Section 4 is subject to confidentiality requirements.

5. NEW CONTRACTS.

5.1 New Contract Criteria. Except to the extent expressly limited in a Service Schedule, Vendor has the right, subject to the City's consent as provided in Section 5.3 of this Schedule 9, to replace any Assigned Contract with a replacement contract or enter into a new contract relating to the performance of the Services (each, a "**New Contract**"; this term includes renewals, modifications, or novations of Assigned Contracts), with such third parties as Vendor deems appropriate, so long as the New Contract:

5.1.1 Does not impose any additional requirements or obligations upon, or reduce the benefits or, if applicable, net effective revenue under the Assigned Contract to, the City without the City's consent.

5.1.2 For contracts whereby the City is solely receiving services, contains service level requirements that are at least comparable to the service level requirements in the Assigned Contract without the City's consent.

5.1.3 For contracts whereby the City is solely receiving services, is not made with a provider ("**Prohibited Provider**") to which the City reasonably objects. To avoid engaging a Prohibited Provider, Vendor shall notify the City at least fourteen (14) days in advance of executing any New Contract of its intention to do so, identifying the proposed replacement provider. The City shall notify Vendor of its objection, and shall provide Vendor

with justification of such objection, to any Prohibited Provider within fourteen (14) days of the City receipt of notice thereof.

Vendor may not replace any Assigned Contract with a New Contract without the City's prior written consent if the Assigned Contract is with a Preferred Provider identified in the applicable Services Schedule, and the New Contract is not with that Preferred Provider.

5.2 Other Requirements for New Contracts. Vendor shall also use all commercially reasonable efforts to ensure that: (i) any New Contract whereby the City receives services includes a clause comparable in form and substance to the clause set forth in Schedule 5.1.1, and (ii) to the extent that Vendor uses the New Contract to acquire goods or services intended for Vendor's other customers as well as the City, the New Contract includes a clause comparable in form and substance to the clause set forth in Schedule 5.1.2. In the event that Vendor enters into a New Contract whereby the City receives services that does not include such clauses, notwithstanding anything in the Agreement to the contrary, the City's sole remedy for such failure shall be the right, at the City's election, not to assume such New Contracts upon the expiration or termination of this Agreement, in either case without any liability to the City with respect to such New Contract. The foregoing shall not relieve the City of its obligation to pay Vendor for Services rendered prior to the expiration or termination of this Agreement, nor shall it relieve the City of its obligation to pay Vendor liquidated damages provided hereunder in the event that the City terminates the Agreement for its convenience or if Vendor terminates the Agreement as a result of the City's breach.

5.3 Consent to New Contracts. Each New Contract which directly affects the Services provided to the City is subject to the City's consent, which consent shall not be unreasonably withheld. Vendor shall provide the City with a copy of the proposed New Contract, with any rate information or other data not required for the City's evaluation redacted. Within ten (10) business days after receipt the City shall notify Vendor of its acceptance or rejection, provided that Vendor represents to the City that the conditions set forth in Sections 5.1.1 and 5.1.2 of this Schedule 9 have been satisfied; otherwise, the City shall provide such notice within thirty (30) days after receipt. If the City rejects a proposed New Contract it shall include a statement of its objections with its notice to Vendor. Vendor shall have a reasonable period of time after receipt of the rejection notice to negotiate with the third party provider to attempt to meet the City objections. Vendor may re-submit a modified proposed New Contract to the City in accordance with this Section 5.3.

5.4 Release of Obligations. Upon execution of a New Contract that replaces, renews, or novates an Assigned Contract, the Assigned Contract shall be terminated without further liability to the City thereunder, and the City shall be relieved of any obligations under the Assigned Contract arising after the effective date of such replacement, renewal, or novation.

6. AGENCY. With respect to all Managed Contracts, the City hereby grants Vendor a limited agency in which Vendor is authorized to act as an agent for the City in certain respects. The scope of any such agency is as set forth in the applicable Service Schedule. The City shall provide Vendor with written evidence of its grant of agency in form and content agreed by the Parties ("**Letters of Agency**") upon the Vendor's request. Any agency, power of attorney, or similar instrument shall terminate automatically upon termination of this Agreement. A Letter of

Agency shall include such agency authority as reasonably necessary for Vendor to provide the Services, including the authority to negotiate more favorable rates, terms, and conditions under the applicable Managed Contract, provided, however, that Vendor shall have no authority to modify, terminate, or cancel any Managed Contract under such agency. Letters of Agency will normally include the following, although each Letter of Agency is subject to the parties' agreement:

6.1 Vendor may place orders for service, discontinue service, change service, analyze and discuss rates and levels of service, analyze and discuss the correction of past and current billing errors, and analyze and discuss the granting of refunds for past billing errors for all orders placed with service providers that are currently under contract to provide services to the City in connection with activities set forth on a Service Schedule, provided that any such orders are made pursuant to the terms of the contract or basic ordering agreement between such service provider and the City.

6.2 The City shall at all times remain the contracting party of record with respect to, and shall remain responsible for compliance with, all contract terms and conditions under the Managed Contracts, unless and until such contracts are assigned to Vendor in accordance with this Agreement. The City shall remain liable for all obligations under such Managed Contracts (including all payment and resource consumption obligations) unless and until the City makes a payment to the Vendor, and the Vendor accepts such payment, to be passed through to the Managed Contracts counterparty, and the City agrees that Vendor shall have no liability to the City for any breach by the third-party provider under such contract.

6.3 Vendor is authorized to analyze and discuss rates and levels of service, to analyze and discuss the correction of past and current billing errors, to analyze and discuss the granting of refunds for past billing errors, and to inquire about and verify any and all information pertaining to the configuration of applicable accounts.

For the duration of the agency under a Letter of Agency, the City acknowledges and agrees that: (a) Vendor is accepting payment for the services received by the City under the Managed Contracts from the City only in Vendor's capacity as the City consultant and agent; and (b) Vendor is not holding itself out as or acting as, and shall not be deemed, a reseller of the services provided under the Managed Contracts. In addition, the grant of agency above shall expire with respect to any contract when such contract terminates. In the event that a Managed Contract terminates prior to the Acceptance Date, the City shall be responsible for replacing any services provided thereunder. In the event that the City enters into a replacement contract for such services, Vendor's and the City respective obligations will continue with respect to that contract to the same extent as with respect to the replaced contract, provided that if such replacement contract materially expands or reduces Vendor's obligations hereunder, then the parties shall agree to an Equitable Adjustment in accordance with the change process set forth in **Section Error! Reference source not found.** of the Agreement.

7. PASS-THROUGH OF SERVICE CREDITS. Vendor shall credit to the City accounts any service credits or other credits actually received from any third-party provider in connection with the Assigned Contracts and New Contracts resulting for the third-party provider's failure to perform under that contract. Nothing in this **Section 7** is intended to limit the City's right to

terminate the Agreement to the extent that such rights are expressly granted elsewhere in this Agreement.

8. THE CITY OBLIGATIONS. The City's failure to comply with applicable obligations (other than obligations which effectively obviate the City's protection from liability under its sovereign immunity rights) under all Assigned Contracts and New Contracts shall (i) excuse any failure of Vendor to provide the Services to the extent caused by such failure, and (ii) require the City, to the extent permitted under state law, to indemnify, defend, and hold harmless Vendor for, from, and against any Losses Vendor incurs as a result of such failure when such Loss was not caused, in whole or substantial part, by Vendor's negligence or failure to act (or refrain from acting) in accordance with Vendor's obligations hereunder. Vendor shall promptly notify the City of the failure and its impact upon the Services, and, wherever reasonably possible, provide the City a reasonable opportunity to cure such failure and use reasonable efforts to mitigate the impact upon the Services

9. OTHER PASS-THROUGH OBLIGATIONS. The City acknowledges and agrees that Vendor's indemnity obligations under the Agreement with respect to any Assigned Contract or New Contract are expressly subject to and limited by any limitations on the indemnity obligations of the third party provider contained in such contract, including limitations on the amount of such indemnity or on the period of time for notifying Vendor of a claim, except to the extent the claim results from any act or omission by Vendor.

10. TERMINATION BY THIRD-PARTY SERVICE PROVIDER. The City acknowledges that certain Assigned Contracts and New Contracts may grant the third-party service provider counterparty rights in relation to the termination, suspension, or discontinuance of a Service or necessary component thereto that are not contained in this Agreement, and that any termination of or interruption to a Service as a result of such third party service provider's termination, suspension, or discontinuance of its provision of goods or services under the Assigned Contract or New Contract shall not be deemed a breach by Vendor of the Agreement unless (i) such termination, suspension, or discontinuance is the result of: a material, uncured breach by Vendor of its obligations to such provider, or (ii) Vendor fails within a reasonably prompt period of time to engage a replacement service provider upon any such termination (and in advance of such termination if Vendor has been notified of the termination reasonably in advance); or (iii) Vendor fails to give the City prompt written notice of same.

11. TERMINATION BY VENDOR. Subject to Vendor's obligations with respect to replacing Assigned Contracts or New Contracts under Section 5 above, any Assigned Contract or New Contract may be terminated at Vendor's sole discretion, and for any reason, without the City consent, so long as the City (i) does not experience any material interruption in any Service as a result of such termination, (ii) Vendor shall be responsible for any payments due to the third-party provider under such contract as a result of such termination unless such termination arises from an act or omission by the City (iii) the cost incurred by the Vendor under any replacement contract shall be substantially the same or less than the cost under the terminated contract (unless the City otherwise consents to any cost increase in writing, or expressly consents to Vendor procuring bids specifically for the replacement contract and approves the bid methodology in advance), and (iv) the replacement service provider is not an affiliate of Vendor (unless the City

has provided prior written consent with full disclosure of the relationship between Vendor and the new service provider).

12. QUALIFICATION ON BREACH BY THE CITY. To the extent anything in this Schedule 9 provides Vendor with an indemnity right against the City as a result of the City's breach of its obligations under an Assigned Contract or New Contract, or the City compliance with its obligations under this Schedule 9 constitutes a Predicate Obligation, such indemnity right shall be effective, and the Predicate Obligation shall excuse Vendor's performance, only if Vendor has provided the City with timely notice of the breach and allowed the City a reasonable opportunity to cure such breach.

CLAUSES FOR NEW CONTRACTS

Schedule 5.1.1

[Vendor] may assign this Agreement to a third party, without Contractor's consent, in the event [Vendor] is required by law or by contract to provide the [goods or services] to such third party, subject to the assignee's performance of [Vendor]'s obligations hereunder in respect to [goods or services] acquired by such third party.

Schedule 5.1.2

Contractor acknowledges that [Vendor] intends to resell [re-license] the [goods or services] to third parties ("**[Vendor] Customers**"). In the event that [Vendor] defaults in its obligations to provide the [goods or services] to a [Vendor] Customer or is required by law or contract to assign its agreement to the [Vendor] Customer, Contractor shall provide the [goods or services] directly to the [Vendor] Customer on the same terms and conditions applicable to [Vendor]'s acquisition of the [goods or services] hereunder, subject to the third party's performance of [Vendor]'s obligations hereunder in respect to [goods or services] acquired by the third party. In calculating price or other terms in the event applicable to the third party, the third party may acquire the [goods or services] at the price such [goods or services] would have been provided to [Vendor], taking account of [Vendor]'s aggregate purchases hereunder.